

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SEAN MATTHEW FINNEGAN,

Plaintiff,

-against-

WEWORK, INC.,

Defendant.

21-CV-5593 (LTS)

ORDER OF DISMISSAL

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff, appearing *pro se*, brings this action invoking the False Claims Act, 31 U.S.C. § 3729, and federal statutes that apply to government contracts, 41 U.S.C. §§ 6503, 6509. By order dated July 15, 2021, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis*. For the reasons set forth below, the Court dismisses this action but grants Plaintiff leave to replead the complaint.

**STANDARD OF REVIEW**

The Court must dismiss an *in forma pauperis* complaint, or portion thereof, that is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *see Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998). The Court must also dismiss a complaint when the Court lacks subject matter jurisdiction. *See Fed. R. Civ. P. 12(h)(3)*. While the law mandates dismissal on any of these grounds, the Court is obliged to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the “strongest [claims] that they suggest,” *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474-75 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in original).

## BACKGROUND

Plaintiff Sean Finnegan brings this action against WeWork, Inc., a company that provides shared workspace to members. Plaintiff lists an address for himself in Washington, D.C., but states that his claims arose in “Miami, Washington, New York, Atlanta, Miami Beach, Virginia, Beverly Hills and other” places. (ECF 2 at 5.)

According to Plaintiff, Defendant WeWork, Inc., “has breached contracts and agreements,” and Plaintiff invokes 41 U.S.C. §§ 6503, 6509, federal statutes applicable to government contracts. Defendant WeWork, Inc., has also allegedly “harassed and stalked,” “sexually harassed,” and “unlawfully evicted” Plaintiff. (*Id.*) Defendant “has made up stories and lies” and “terminated the Plaintiff’s employment,” causing him “catastrophic personal and professional damage.” (*Id.*) Plaintiff has been hospitalized numerous times, allegedly because of Defendant’s actions. Moreover, “Defendant’s security guards are also threatening, abusing, assisting, and harassing the Plaintiff.” (*Id.* at 6.)<sup>1</sup>

Plaintiff seeks damages (*id.*) and an injunction prohibiting Defendant from restricting Plaintiff’s access to any of its locations (ECF 3 at 1-2).

## DISCUSSION

The False Claims Act (FCA), 31 U.S.C. § 3729, imposes civil liability upon “any person” who “knowingly presents, or causes to be presented, to an officer or employee of the United States Government . . . a false or fraudulent claim for payment or approval.” 31 U.S.C. § 3729(a). A suit under

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<sup>1</sup> Plaintiff recently filed two additional actions in this Court. The first is an action against an insurance company, in which Plaintiff alleges that defendant breached its contract and is “harassing” and “abusing” him, causing him to become homeless, *Finnegan v. Lemonade*, ECF 1:21-CV-05719, 2 (LTS) (S.D.N.Y.). The second is an action against the New York City Police Department (NYPD) for failing to investigate matters that he brought to the attention of NYPD officers, *Finnegan v. New York City Police Dep’t*, ECF 1:21-CV-5798, 2 (LTS) (S.D.N.Y.). In addition, it appears from public records that Plaintiff has filed dozens of actions in courts across the country.

the FCA may be brought by either the federal government or by a private person, or “relator,” who sues for the United States in a *qui tam* action. 31 U.S.C. § 3730(a), (b)(1); *United States ex rel. Eisenstein v. City of New York*, 556 U.S. 928, 932 (2009). Private individuals, however, cannot bring *qui tam* actions under the FCA *pro se*, and must instead be represented by counsel. See *United States ex rel. Mergent Servs. v. Flaherty*, 540 F.3d 89, 93 (2d Cir. 2008); *Klein v. City of New York*, 10 – CV-9586, 2012 WL 546786, at \*5 (S.D.N.Y. Feb. 21, 2012). Because Plaintiff cannot proceed *pro se* in asserting claims under the FCA, the Court dismisses Plaintiff’s FCA claims without prejudice.

Plaintiff also invokes 41 U.S.C. §§ 6503, 6509, but he fails to state a claim on which relief can be granted under these statutes because he does not plead any facts showing that this matter involves a government contract. Plaintiff’s complaint must therefore be dismissed in its entirety.

Generally, a court should not dismiss a *pro se* complaint “without granting leave to amend at least once when a liberal reading of the complaint gives any indication that a valid claim might be stated.” *Dolan v. Connolly*, 794 F.3d 290, 295 (2d Cir. 2015) (quoting *Chavis v. Chappius*, 618 F.3d 162, 170 (2d Cir. 2010) (internal quotation marks omitted)). But a court has inherent power to dismiss without leave to amend or replead in “where … the substance of the claim pleaded is frivolous on its face,” *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988) (citation omitted), or where amendment would otherwise be futile, *Hill v. Curcione*, 657 F. 3d 116, 123-24 (2d Cir. 2011); *see also Shapiro v. McManus*, 136 S. Ct. 450, 455-56 (2015) (holding that federal-question jurisdiction is lacking where the claims are “wholly insubstantial and frivolous,” “essentially fictitious,” or “obviously without merit” (internal quotation marks and citations omitted)).

Here, it is unclear if Plaintiff may intend to allege that he worked for Defendant WeWork, Inc., and suffered some unlawful employment action, or if Plaintiff had an interaction with a security guard at WeWork, Inc., that Plaintiff contends violated his rights under some federal law. Because it is not wholly clear that granting leave to amend would be futile, the Court grants Plaintiff leave to amend his complaint.

### **CONCLUSION**

Plaintiff's claims under the False Claims Act are dismissed without prejudice because a private individual cannot proceed *pro se* in a *qui tam* action. Plaintiff's claims under 41 U.S.C. §§ 6503, 6509, are hereby dismissed for failure to state a claim on which relief can be granted. 28 U.S.C. § 1915(e)(2)(B)(ii).

The Court grants Plaintiff 30 days' leave to file an amended complaint. The Clerk of Court is directed not to enter judgment and to hold this matter open on the docket for 30 days in order to provide Plaintiff an opportunity to file an amended complaint. Plaintiff must submit the amended complaint to this Court's Pro Se Intake Unit within 30 days of the date of this order, caption the document as an "Amended Complaint," and label the document with docket number 21-CV-5593 (LTS). An Amended Complaint form is attached to this order. No summons will issue at this time. If Plaintiff fails to comply within the time allowed, and he cannot show good cause to excuse such failure, the complaint will be dismissed for failure to state a claim upon which relief may be granted.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

The Clerk of Court is directed to mail a copy of this order to Plaintiff and note service on the docket.

SO ORDERED.

Dated: July 26, 2021  
New York, New York

/s/ Laura Taylor Swain  
LAURA TAYLOR SWAIN  
Chief United States District Judge

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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Write the full name of each plaintiff.

CV \_\_\_\_\_  
(Include case number if one has been assigned)

-against-

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**AMENDED**

**COMPLAINT**

Do you want a jury trial?

Yes     No

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Write the full name of each defendant. If you need more space, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section II.

**NOTICE**

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

## I. BASIS FOR JURISDICTION

Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one State sues a citizen of another State or nation, and the amount in controversy is more than \$75,000, is a diversity case. In a diversity case, no defendant may be a citizen of the same State as any plaintiff.

What is the basis for federal-court jurisdiction in your case?

- Federal Question**
- Diversity of Citizenship**

### A. If you checked Federal Question

Which of your federal constitutional or federal statutory rights have been violated?

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### B. If you checked Diversity of Citizenship

#### 1. Citizenship of the parties

Of what State is each party a citizen?

The plaintiff, \_\_\_\_\_, is a citizen of the State of  
(Plaintiff's name)

\_\_\_\_\_  
(State in which the person resides and intends to remain.)

or, if not lawfully admitted for permanent residence in the United States, a citizen or subject of the foreign state of

\_\_\_\_\_.  
If more than one plaintiff is named in the complaint, attach additional pages providing information for each additional plaintiff.

If the defendant is an individual:

The defendant, \_\_\_\_\_, is a citizen of the State of  
(Defendant's name)

or, if not lawfully admitted for permanent residence in the United States, a citizen or subject of the foreign state of

If the defendant is a corporation:

The defendant, \_\_\_\_\_, is incorporated under the laws of

the State of \_\_\_\_\_

and has its principal place of business in the State of \_\_\_\_\_

or is incorporated under the laws of (foreign state) \_\_\_\_\_

and has its principal place of business in \_\_\_\_\_.

If more than one defendant is named in the complaint, attach additional pages providing information for each additional defendant.

## II. PARTIES

### A. Plaintiff Information

Provide the following information for each plaintiff named in the complaint. Attach additional pages if needed.

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First Name	Middle Initial	Last Name
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Street Address
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County, City	State	Zip Code
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Telephone Number	Email Address (if available)
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**B. Defendant Information**

To the best of your ability, provide addresses where each defendant may be served. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are the same as those listed in the caption. Attach additional pages if needed.

Defendant 1:

First Name	Last Name	
Current Job Title (or other identifying information)		
Current Work Address (or other address where defendant may be served)		
County, City	State	Zip Code

Defendant 2:

First Name	Last Name	
Current Job Title (or other identifying information)		
Current Work Address (or other address where defendant may be served)		
County, City	State	Zip Code

Defendant 3:

First Name	Last Name	
Current Job Title (or other identifying information)		
Current Work Address (or other address where defendant may be served)		
County, City	State	Zip Code

Defendant 4:

First Name	Last Name	
Current Job Title (or other identifying information)		
Current Work Address (or other address where defendant may be served)		
County, City	State	Zip Code

**III. STATEMENT OF CLAIM**

Place(s) of occurrence: \_\_\_\_\_

Date(s) of occurrence: \_\_\_\_\_

**FACTS:**

State here briefly the FACTS that support your case. Describe what happened, how you were harmed, and what each defendant personally did or failed to do that harmed you. Attach additional pages if needed.

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**INJURIES:**

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

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**IV. RELIEF**

State briefly what money damages or other relief you want the court to order.

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## V. PLAINTIFF'S CERTIFICATION AND WARNINGS

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I agree to notify the Clerk's Office in writing of any changes to my mailing address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

Dated	Plaintiff's Signature	
First Name	Middle Initial	Last Name
Street Address		
County, City	State	Zip Code
Telephone Number	Email Address (if available)	

I have read the Pro Se (Nonprisoner) Consent to Receive Documents Electronically:

Yes    No

If you do consent to receive documents electronically, submit the completed form with your complaint. If you do not consent, please do not attach the form.